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Federal Communications Commission

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-142

In the Matter of

Amendment of Section 73.202(b), RM-8208
Table of Allotments,
FM Broadcast Stations.
(Willits, California)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 11, 1995;

Released: July 19, 1995

By the Chief, Allocations Branch:

1. Before the Commission for consideration is the *Notice of Proposed Rule Making*, 8 FCC Rcd 3674 (1993), issued in response to a petition filed on behalf of Granite Broadcasting Corporation and KNTV, Inc.¹ ("petitioner"), provisionally proposing the deletion of VHF television Channel 11 at Willits, California, to accommodate the petitioner's relocation plans for Station KNTV(TV), Channel 11, San Jose, California. Petitioner filed supporting comments in response to the *Notice*. Opposing comments were filed individually by KTVU, Inc. ("KTVU"), licensee of Station KTVU(TV), Channel 2, Oakland, California; Group W Television, Inc. ("Group W"), licensee of Station KPIX(TV), Channel 5, San Francisco, California; UTV of San Francisco, Inc. ("UTV"), licensee of Station KBHK-TV, Channel 44, San Francisco; KGO Television, Inc. ("KGO"), licensee of Station KGO-TV, Channel 7, San Francisco (collective commenters are referred to herein as the "objectors"); and by William H. and Ronna L. Sauro (the "Sauros"). Petitioner filed a consolidated reply to the opposition comments. Reply comments were also filed individually by KTVU and Group W, and jointly by UTV and KGO.

2. Petitioner, licensee of Station KNTV(TV), Channel 11, San Jose, California, requested the deletion of vacant VHF Channel 11 at Willits, or alternatively, the substitution of a UHF channel at Willits. Petitioner maintains that at its present site on Loma Prieta Peak, located on the Sargent-Berrocal fault, and near the San Andreas fault, Station KTVU(TV) sustained damage to its transmitter tower and antenna in the Loma Prieta earthquake in October 1989. As Loma Prieta Peak is located in a seismically active region, petitioner desires to relocate its transmitter to a site north of San Jose, which it considers less susceptible to severe seismic activity. As stated in the *Notice*, petitioner's concern is related not only to the potentially significant cost of future seismic activity on Loma Prieta Peak, but as Station KNTV(TV) is a primary television source of news for San Jose's residents, to enable it to provide crucial information during future emergencies as well.

3. Petitioner stated that geographic and topographic factors combined limited the relocation of Station KNTV(TV)'s transmitter to the north. However, petitioner advised that vacant Channel 11 at Willits constrained its ability to move in that direction.² Additionally, petitioner advised that further movement to the south would result in diminishment of Station KNTV(TV)'s signal strength and terrain shielding due to the Santa Cruz Mountains. Movement in an easterly direction is limited by Station KRXXI(TV), Channel 11, Reno, Nevada.³

4. In support of the requested deletion of vacant Channel 11 at Willits, or the substitution of a UHF channel therefor,⁴ petitioner urged that Willits would not be deprived of potential television service as Channel 11 may never be authorized. As stated in the *Notice*, Channel 11 at Willits is not available for application due to the present freeze on the filing of applications for new TV stations in certain metropolitan areas. *See Order, supra*. Willits is within 304.9 kilometers (189.5 miles) of San Francisco, one of the affected freeze markets.

5. Although Channel 11 was allotted to Willits in 1987, it has been unavailable for applications pending completion of the Commission's ATV proceeding, *supra*. Under the circumstances, we stated our hesitancy to delete the channel. Therefore, the *Notice* provisionally proposed the deletion of Channel 11 at Willits, subject to the submission of further justification and information from the petitioner.⁵ Nevertheless, we stated that in the event an expression of interest in retaining Channel 11 at Willits was received during the initial comment period, the allotment may be

¹ As indicated in the *Notice*, KNTV, Inc., the licensee of Station KNTV(TV), Channel 11, San Jose, California, is a wholly-owned subsidiary of Granite.

² Coordinates at the reference site for Channel 11 at Willits are 39-32-28 and 123-29-16.

³ Coordinates at the authorized site of Station KRXXI(TV) are 39-35-28 and 123-29-16.

⁴ Petitioner's alternate request to substitute a UHF channel as a replacement for VHF Channel 11 at Willits to accommodate its relocation plans was not entertained in the *Notice*. Rather, petitioner was advised that consideration of a UHF replacement for VHF Channel 11 at Willits was constrained by the terms of the Commission's current freeze on allotments in certain television markets, pending the outcome of the advanced television ("ATV") proceeding. *See Order, Advanced Television Systems and Their Impact on the Existing Television Service*, 52 FR 28346, published July 29, 1987. As Willits is located within 304.9 kilometers (189.5 miles) of San Francisco, one of the affected

markets, petitioner was advised that its substitution request would only be considered if an acceptable UHF channel could be found upon completion of the Commission's allotment plan for ATV use in the San Francisco area.

⁵ Specifically, petitioner was requested to address the following questions: whether its proposal could be accommodated from its intended site by placing a further site restriction on Channel 11 at Willits; whether petitioner could operate Station KNTV(TV) in a manner designed to avoid interference to the Willits allotment; whether, assuming a further site restriction on Channel 11 at Willits, petitioner could provide reasonable assurance of an available transmitter site conforming to the restriction; whether there are any transmitter sites available for Station KNTV(TV) that would meet the spacing requirements to Channel 11 at Willits, and if so, why those locations would not be suitable to accommodate petitioner's relocation plans; and why any particular site chosen by petitioner for the relocation of Station KNTV(TV) is less susceptible to earthquakes than other

retained in the absence of a compelling showing that the deletion would be more conducive to serving the public interest.

6. In response to our request for further justification and information, petitioner asserts that its proposal cannot be accommodated by a further site restriction on Channel 11 at Willits. Petitioner advises that the specified reference point for Channel 11 at Willits, located 18.6 kilometers north of the community, places it as close to Station KNTV(TV)'s San Jose site and the site specified for Station KRXI(TV), Channel 11, Reno, Nevada, as the minimum distance separation requirements of the Commission's Rules allows. Further, petitioner remarks that while there are other theoretical sites from which service to Willits could be provided that would meet all applicable spacing requirements, line-of-sight coverage of Willits cannot be accomplished from any of those sites. Petitioner alleges that as Willits is surrounded by mountains, even the current site restriction on Channel 11 at Willits does not provide for unobstructed coverage of the community as required by Section 73.685(b) of the Commission's Rules. Therefore, petitioner comments that due to terrain shadowing, a further site restriction on Channel 11 would only exacerbate the current deficiency.

7. In response to our question whether petitioner could operate Station KNTV(TV) in a manner designed to avoid interference to Channel 11 at Willits, petitioner remarks that if it reduced its power or directionalized its antenna either from its present site, or any other site, it would significantly degrade its service to the 1.4 million residents of San Jose as well as an estimated 6.6 million residents within its Grade B contour.

8. Further, petitioner asserts that due to the area topography, there are no sites available to relocate Station KNTV(TV) consistent with the requirements of Section 73.610 of the Commission's Rules, with respect to Channel 11, Willits. Nor is it possible for Station KNTV(TV) to move its site in a southerly direction, as such relocation would result in its inability to comply with the requirements of Section 73.685 of the Commission's Rules. Thus, petitioner asserts there are no fully-spaced sites from which it can provide service to San Jose and other pockets of population within its service area that compares with, or is superior to its current level of service.

9. Petitioner advises that there are five potentially alternate sites located approximately 3.5 to 5.5 miles north and northwest of its current site which are the least short-spaced locations that would enable Station KNTV(TV) to achieve its goal. However, none of the sites can be considered absent the deletion of Channel 11 at Willits. Petitioner claims that the alternate locations, some of which are established communications sites, offer both the needed

elevation and accessibility. Based upon the declaration of Richard E. Hammond, petitioner's consultant on seismic events, the area containing the five alternate sites are further removed from both the San Andreas and the Sargent faults, and are not located on any seismically active fault. Therefore, petitioner believes the risk of destructive seismic activity is less at any of the alternative sites than at its current transmitter site on Loma Prieta Peak.

10. The objectors provided documented evidence of experts in seismological and structural engineering to demonstrate that contrary to petitioner's claim, seismic instability may be greater at sites to the north of Loma Prieta Peak. According to Dr. C.B. Crouse, P.E., a consultant who specializes in earthquake and seismology engineering, as a result of the 1989 Loma Prieta earthquake, built-up stress in the Sargent fault was released and thus petitioner's current transmitter site is probably one of the more seismically stable areas in the San Francisco Bay Area. Additionally, the objectors assert that the presence of numerous other transmitting facilities on Loma Prieta Peak suggests that it is not an unsuitable communications site.⁶ Moreover, the objectors advise that there is at least one site available to the south which would not require the deletion of Channel 11 at Willits.⁷ Objectors claim that the availability of such sites is fatal to petitioner's proposal. See Notice, 8 FCC Rcd at 3674-75, ¶ 5.

11. Moreover, according to the objectors' consultants, structural improvements to the antenna of Station KNTV(TV) at its present site designed to comply with modern wind load criteria, in addition to framing the tower to a pinned base, would minimize the risk of damage by permitting rotation of the base. Therefore, the objectors urge that a relocation of Station KNTV(TV) from its present site is not necessary to reduce the likelihood of potential earthquake damage.

12. Additionally, the objectors advise that contrary to petitioner's claim that Station KNTV(TV) is the principal source for the dissemination of news and information to the San Jose area, four other television stations are licensed to San Jose. Additionally, a multiplicity of stations from the San Francisco-Oakland-San Jose, Sacramento-Stockton and Salinas-Monterey television markets supply predicted Grade B service to San Jose. Conversely, the objectors comments that as Willits is an underserved community, the deletion of Channel 11 at that locality would be inconsistent with the Commission's television allocation policy. See *Sixth Report and Order*, 41 F.C.C.148, 167 (1952).⁸

13. Moreover, the objectors comment that petitioner's argument that the deletion of Channel 11 at Willits will not have an adverse impact on the public interest as it is likely it will eventually be deleted to accommodate ATV allotments, is premature as many ATV-related issues re-

area sites.

⁶ According to the objectors documented engineering, Loma Prieta is a *principal* communications location for the San Jose area. In addition to the petitioners' Station KNTV(TV), Station KLXV-TV, Channel 65, San Jose is also located there, as is a TV Booster station, an LPTV station, an ITFS station, four FM stations, numerous point-to-point microwave stations and land mobile stations. To the objectors' knowledge, none of the other stations has sought to relocate from Loma Prieta based upon potential seismic peril at that site.

⁷ In this regard, according to the objectors' engineering summary, Station KNTV(TV) could relocate consistent with Section 73.610 of the Commission's Rules at a site 8 kilometers (5 miles)

southeast, either at or near the transmitter site of Station KSBW(TV), Channel 8, Salinas. From that location, a 77 dBu contour would encompass San Jose, consistent with Section 73.685 of the Commission's Rules, provided Station KNTV(TV) employed facilities comparable to those of Station KSBW(TV). Therefore, objectors' engineering submits that it is unnecessary for Station KNTV(TV) to relocate to the north to surmount geographic and terrain factors.

⁸ The objectors advise that Willits is presently served by Station KFWU(TV), Ft. Bragg, California, only, which is a satellite of Station KRCR-TV, Redding, and that no other station, or potential allocation, places or could place even a Grade B contour over Willits.

main unsettled.⁹ The objectors also assert that the Channel 11 allotment at Willits, which has been unavailable for application since 1987 pending completion of the Commission's ATV proceeding, provides the promise of affording a second local television service to a sizeable area of northern California. Therefore, the objectors conclude that petitioner has failed to demonstrate a compelling showing of the public interest need for the deletion of Channel 11 at Willits. The objectors claim that petitioner has not proven that its present transmitter site on Loma Prieta is more seismically unstable than other sites, or that other identified, suitable sites are unavailable to it. Therefore, the objectors urge denial of the proposal.

14. The Sauros' remark that the effect of the ATV freeze has precluded the opportunity to initiate local television service at Willits, while petitioner's proposal would deny Willits' residents the opportunity for such service in the future. The Sauros advise that once the ATV freeze has been removed they will file an application to operate a new television station on Channel at Willits.

15. In response to the objectors' comments, petitioner avers that it has fully addressed the concerns posed in the Notice. Petitioner refutes the objectors' showings, stating that the suggested use of an alternate site at or near the site of Station KSBW(TV) to the southeast of Loma Prieta, would not decrease the earthquake hazard, and based upon its engineering studies, would result in degradation of its signal coverage of San Jose due to intervening terrain obstructions. Petitioner maintains that unless the Willits allotment is eliminated, it cannot relocate the transmitter for Station KNTV(TV) to a more seismically secure area from which it could provide comparable or better service to San Jose and the surrounding vicinity than that achieved from its current site.

16. Further, petitioner asserts that deletion of Channel 11 at Willits will not be detrimental to the public interest as the Willits allotment is technically defective. In this regard, petitioner states that spacing constraints preclude a further site restriction on Channel 11 at Willits, and there are no other sites from which line-of-sight coverage of Willits can be provided.

17. As to the petitioner's identification of alternative short-spaced sites north of Loma Prieta Peak, objectors respond that the spacing deficiencies from those sites to the Channel 11 reference point at Willits is minimal (*i.e.*, 3.5-5.5 miles northwest of the existing KNTV(TV) site). Therefore, the objectors urge that petitioner could request a waiver of the *de minimus* short spacing in the application context, rather than deleting the Willits allotment. Moreover, objectors assert that petitioner did not provide technical information or analysis, as requested in the Notice (§ 5), to demonstrate whether Station KNTV(TV) could be operated in a manner which could provide interference protection to Channel 11 at Willits. In this regard, the objectors state that petitioner merely made general assertions regarding loss of coverage at sites to the south of

Loma Prieta, rather than providing specific engineering analysis pertaining to directionalization, use of channel offsets, and terrain shielding to provide interference protection.

18. Additionally, according to the objectors' engineering consultants, from a site south of Loma Prieta Peak, at or near the transmitter of Station KSBW(TV), Salinas, California, Station KNTV(TV) could provide 77 dBu service to 95% of San Jose, thus satisfying the Commission's application criteria to demonstrate the ability to provide coverage over at least 80% of a station's licensed community.

19. The objectors also note that petitioner did not address the alternative of structural improvements to its existing tower for Station KNTV(TV) at Loma Prieta Peak. Nor did petitioner offer any expert opinion to validate that the alternative sites it is considering north of Loma Prieta Peak are more seismically stable than its present location. In the absence of a convincing demonstration that such lesser alternatives are unavailable, the objectors urge that petitioner has failed to make a compelling public interest showing to justify the Willits deletion. Moreover, the objectors urge that the current expression of interest in the use of Channel 11 at Willits clearly bars its deletion at that community, citing *Montrose and Scranton, Pennsylvania*, 5 FCC Rcd 6305 (1990).

20. In view of the Sauros' expression of interest in retaining Channel 11 at Willits, in accordance with established Commission policy,¹⁰ we will deny the petitioner's proposal. As stated in the Notice, the receipt of an expression of interest in retaining Channel 11 at Willits may result in its retention in the absence of a compelling public interest justification requiring its deletion. Even if an expression of interest had not been received, we believe the petitioner has failed to demonstrate that its current site is more susceptible to ground movement than other unspecified sites north of Loma Prieta Peak to which it desires to relocate Station KNTV(TV). Nor has petitioner convincingly demonstrated the lack of available sites elsewhere that would not require the deletion of Channel 11 at Willits, or demonstrated why "equivalent protection" measures¹¹ could not be employed at a preferred site to accommodate its relocation plans.

21. Furthermore, contrary to petitioner's assertion, we do not believe that based upon the information presented, Channel 11 is a defective allotment at Willits. Although the petitioner alleges that the mountainous terrain surrounding Willits precludes line of sight service to that community, other sites closer to the community may be available in connection with an applicant's request for waiver of Section 73.685 of the Commission's Rules. Additionally, the retention of Channel 11 at Willits is consistent with the Commission's television allocation policy priorities 2 and 3 "To provide each community with at least one television broadcast station" and "To provide a choice of at least two television services to all parts of the United States." See

⁹ Citing, *e.g.*, *Second Further Notice of Proposed Rule Making*, MM Docket No. 87-268, 7 FCC Rcd 3340 (1992).

¹⁰ See, *e.g.*, *Snow Hill and Kinston, North Carolina*, 55 FCC 2d 769 (1975); *Red Oak, Iowa*, 46 FCC 2d 344 (1974); *Fond du Lac and Sheboygan, Wisconsin*, 55 RR 2d 592, 594 (1984); *Martin and Salyersville, Kentucky*, 50 RR 2d 502 (1981).

¹¹ Equivalent protection may be achieved by any one or any combination of the following: precise offset, directional trans-

mitting antenna, reduction in power, reduction in antenna height, or perhaps terrain shielding. The latter consideration may be employed in a limited number of special situations where such shielding can be predicted with a high degree of confidence. As Group W notes, the provision of "equivalent protection" from a short-spaced site is a significant factor in the consideration of any waiver request, citing *Caloosa Television Corp.*, 3 FCC Rcd 3656, 64 R.R. 2d 1640 (1988).

Sixth Report and Order, supra. Based upon the above considerations, the petitioner's proposal cannot be reconciled with the public interest.

22. Accordingly, IT IS ORDERED, that the request of Granite Broadcasting Corporation and KNTV, Inc. to delete VHF Channel 11 at Willits, California (RM-8208) IS DENIED.

23. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

24. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

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